

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

FILED
BILLINGS, MT

2007 MAR 21 PM 1 12

PATRICK E. DUFFY, CLERK
BY _____

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BRIAN S. WHITE BEAR, SR.,) CV-06-054-BLG-RFC

)

Plaintiff,

)

vs.

)

**MONTANA DEPARTMENT
OF CORRECTIONS, et al.,**

)

Defendants.

)

**ORDER ADOPTING FINDINGS
AND RECOMMENDATIONS OF
U.S. MAGISTRATE JUDGE**

On February 16, 2007, United States Magistrate Judge Carolyn S. Ostby entered her Findings and Recommendation. Magistrate Judge Ostby recommends this Court dismiss Plaintiff's Complaint and Amended Complaint with prejudice for failure to state a claim upon which relief may be granted. Magistrate Judge Ostby further recommends the dismissal should count as a strike with regard to the Prison Litigation Reform Act, 28 U.S.C. § 1915(g).

Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1).¹ In this matter, no party filed objections to the February 16, 2007 Findings and Recommendation. Failure to object to a magistrate judge's findings and recommendation waives all objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999). However, failure to object does not relieve this Court of its

¹In prisoner cases, this Court extends the time to object to twenty days in order to take into account the Supreme Court's ruling in *Houston v. Lack*, 487 U.S. 266, 270-71 (1988), and the somewhat greater mailing time that is involved in sending documents into and out of a prison facility.

burden to review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

After an extensive review of the record and applicable law, this Court finds Magistrate Judge Ostby's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety.

Accordingly, **IT IS HEREBY ORDERED** Plaintiff's Complaint and Amended Complaint are **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief can be granted. The dismissal shall count as a strike with regard to the Prison Litigation Reform Act, 28 U.S.C. § 1915(g).

The Clerk of Court shall notify the parties of the making of this Order and close this case accordingly.

DATED the 21 day of March, 2007.



RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE